

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

JAMES C. JUSTICE III; A & G COAL CORP.;)
CHESTNUT LAND HOLDINGS, LLC;)
BLUESTONE COAL CORPORATION;)
KENTUCKY FUEL CORPORATION;)
NATIONAL COAL, LLC; PREMIUM COAL)
COMPANY, INCORPORATED; S AND H)
MINING, INC.; and TAMS MANAGEMENT,)
INC.,)

Plaintiffs,

v.

OFFICE OF SURFACE MINING)
RECLAMATION AND ENFORCEMENT,)
UNITED STATES DEPARTMENT OF THE)
INTERIOR,)

Defendant.

Civil Action No. 7:19-cv-00381

DEFENDANT’S MOTION TO DISMISS

Plaintiffs’ Complaint alleges Defendant entered into a binding contract with Plaintiff to settle the \$4.2 million for \$250,000. Plaintiffs ask this Court to issue a declaratory judgment that this contract exists and then to enforce its terms. Defendant, Office of Surface Mining Reclamation and Enforcement (OSMRE), a bureau of the U.S. Department of the Interior (DOI), moves to dismiss Plaintiffs’ Amended Complaint under Rules 12(b)(1) and 12(b)(6) because this Court lacks subject matter jurisdiction and Plaintiffs fail to state a claim.

The Court lacks subject matter jurisdiction for two reasons. First, DOI has not waived its sovereign immunity and is thus immune from this suit pursuant to the Tucker Act, 28 U.S.C. § 1491, and Little Tucker Act, *id.* § 1346. Second, the Tucker and Little Tucker Acts vested jurisdiction for Plaintiffs’ claim exclusively with the U.S. Court of Federal Claims.

Additionally, Plaintiffs failed to state a claim for three reasons. First, Plaintiffs did not allege sufficient facts to plead a contract or promissory estoppel. Second, promissory estoppel is unavailable against the government. And third, the Statute of Frauds requires Plaintiffs' alleged agreement to be in writing because it was not to be performed within a year.

As set forth in Defendant's accompanying Memorandum of Law, Defendant requests the Court grant its Motion to Dismiss.

Respectfully submitted,

THOMAS T. CULLEN
United States Attorney

Date: November 12, 2019

/s/ Laura Day Rottenborn
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CERTIFICATE OF SERVICE

I hereby certify that on November 12, 2019, I caused a true copy of the foregoing Motion to Dismiss to be electronically filed with the Clerk of the Court using the CM/ECF system, which will provide electronic notice to all counsel of record.

/s/ Krista Consiglio Frith
Krista Consiglio Frith
Assistant United States Attorney